RAMLI YUNUS, RE

HIGH COURT MALAYA, KUALA LUMPUR
VC GEORGE J
[BANKRUPTCY NO. D3-43-1797-87]
2 MARCH 1992

BANKRUPTCY: *Bankruptcy notice issued and served - Motion by bankrupt seeking annulment of the receiving and adjudication orders made more than two years before - Whether notice void ab initio for failing to specify precise liquidated sum - Whether petition vague and ambiguous in stating the amount owing?*

The bankrupt in this matter took out a motion on 12 August 1991 seeking the annulment of receiving and adjudication orders made on 19 April 1989 on the grounds (i) that the bankruptcy notice had failed to specify the precise liquidated sum owed at the date of its issue and was therefore *void ab initio*, and (ii) that the petition was vague and ambiguous as to the amount owing at the date of issue of the said notice.

Held:

[1] The exact amount need not be set out in the notice. This would be impossible for the petitioner to do as only the bankrupt would know exactly when (if at all) he is going to make payment, given the seven statutory days to satisfy the debt under s. 3(1)(i) of the Bankruptcy Act 1967 since the amount of interest accumulating should also be paid. As long as the notice sets out a formula by which the bankrupt may calculate the exact amount owed by him, this would suffice.

[2] The Bankruptcy Act does not require that the judgment creditor, in the notice, demands anything less than he is entitled to.

[3] The particulars of how the sum stated in the notice is arrived at is given on page two of the notice in this matter. From this it is clear what the recipient is required to pay. The notice may make confusing reading at first glance but this does not make it *void ab initio*.

[4] In any event, the bankrupt is asking for annulment at a very late stage in the matter. The order for public examination has already been made. He could thus be said to have waived his complaints.

[Motion dismissed with costs.]

Legislation referred to:
Bankruptcy Act 1967, s. 3(1)(i)

For the judgment debtor/applicant - Kamilah; M/s. Kamilah & Nazariah
For the judgment creditor/petitioner - Zaleha; M/s. Hisham, Sobri & Kadir

JUDGMENT

VC George J:

The bankruptcy notice was caused to be issued on 8 April 1987 in respect of a judgment that had been entered against Ramli bin Yunus the applicant bankrupt. It was duly served (by substituted service) on or about 22 March 1989. Ramli bin Yunus was absent when the petition was called. The receiving order and the order adjudicating him a bankrupt were made on 19 April 1989.

The required statement of affairs was sworn to on 8 June 1990 and filed by the bankrupt with the Official Assignee's office. Therein the bankrupt states that his gross liabilities amount to RM98,159.44 and he values his assets at RM1,200. He states as the amount owing to the petitioner RM46,831,94. The only other creditor is Majlis Amanah Rakyat in the sum of RM51,327.50.

On 19 August 1991 the Registrar fixed 12 November 1991 for the public examination of the bankrupt. Meanwhile on 12 August 1991 the bankrupt took out his motion encl. (28) in the Court file seeking to have the orders of 19 April 1989 annulled and asks for the costs of the application. In the only affidavit in support of the application the bankrupt having identified himself, refers to the bankruptcy notice and contends that it was *void ab initio* "because it did not specify the precise liquidated sum ... as at the date of issue of the bankruptcy notice." He also contends that the petition is vague and ambiguous as to the amount owing as at 8 April 1987. Nothing else of any significance is stated in the affidavit.

An examination of the bankruptcy notice reveals that by it Ramli bin Yunus was required to pay "the aggregate sum of RM46,831.94 with interest on the sum of RM44,072.14 at 7.5% p.a. from 1 March 1987 to the date of realisation and the plaintiff's fees on a solicitor and client ... basis. On the 2nd page of the notice particulars were given as to how the RM46,831.94 was arrived at. It sets out the judgment sum as being RM44,072.14 and computes the amount of interest payable up to 31 January 1987 and the plaintiff's solicitors and client fees and costs" at RM225 and goes on to compute the aggregate to arrive at the said RM46,831.94. It goes on to provide "Plus further interest accruing on the sum of RM44,072.14 at the rate of 7.5% p.a. from 1 March 1987 to date of final payment or date of receiving and adjudicating orders".

I have said it before and I say it again that there is no call to assume that recipients of bankruptcy notices are imbeciles. Even if the exact amount to be paid is not set out, so long as a simple formula to be used to compute it is set out it cannot be said that recipient would not know what he is required to pay. In fact since the recipient is given the statutory 7 days to pay up the amount (s. 3(1)(i) of the Bankruptcy Act) and since it is only he who would know when within those 7 days the amount is going to be paid (if he is capable or intends effecting payment of the amount said to be due from him) it is not at all possible for the writer of the bankruptcy notice to say exactly what is the amount to be paid when it is paid where the final judgment on which the notice is based provides for interest to be paid. It is also relevant to note that the Bankruptcy Act does not provide for the judgment creditor to demand by the bankruptcy notice anything less than that he is entitled to under the terms of the final judgment on which the notice is based.

In the instant case, the 1st page of the bankruptcy notice is supplemented by the contents of its 2nd page where certain indorsements on the notice were made and where particulars of how the said RM46,831.94 referred to as "the aggregate sum" to be paid in the 1st page of the notice is set out. From these particulars it is clear that what the recipient is required to pay is the judgment sum of RM44,072.14 together with interest computed at 7.5% per annum from 1 January 1986 to 31 January 1987 and "solicitor and client fees and costs" at RM225 to give the said aggregate sum (spelt out as such) of RM 46,831.74. It covers the judgment sum, the interest ordered to be paid in the judgment computed to 31 January 1987 and the solicitor and client fees and costs.

Section 3(1)(i) provides that the judgment debtor should be required to pay the judgment debt or sum ordered to be paid "in accordance with the terms of the judgment or order". In the instant case interest was ordered to be paid at 7.5% per annum on the judgment sum

until realisation" - until full payment is effected. Unless the judgment creditor wants to waive further interest he is entitled to ask in the bankruptcy notice for further interest which the judgment debtor is required to calculate up to the date that he in fact makes the payment. In effect that is what the 1st page of the notice requires the recipient to do: "with interest on the sum of RM44,072.14 at the rate of 7.5% per annum from 1 March 1987 to the date of realisation." And that is what is set out under "particulars" in the 2nd page of the notice under: "Plus further interest accruing on the sum of RM44,072.14 at the rate of 7.5% per annum from 1 March 1987 to date of final payment." However there are the further words "or date of receiving and adjudication orders." I have noticed that any number of solicitors appear to be using that phrase in their bankruptcy notices. In the context of a bankruptcy notice that phrase serves no purpose other than to let the recipient of the notice know that if he does not meet the demand (and cannot satisfy the Court that he need not meet the demand) in the ensuing bankruptcy the judgment creditor will prove for the debt with interest calculated up to the date of the pronouncement of the receiving and adjudication orders. To state that in the bankruptcy notice is quite unnecessary but doing so does not make it unclear what the recipient is required to do to avoid committing an act of bankruptcy.

At best the only complaint the judgment debtor can make in respect of the bankruptcy notice is that he had to read it two or three times before he understood what was required of him and could work out what was the amount he was required to pay. That does not make the notice *void ab initio* or at all.

In any event I am far from satisfied that the bankrupt should at this stage, after allowing various steps in the bankruptcy proceedings to be taken and after he has himself taken various steps in the proceedings including filing the statement of affairs and in effect admitting to being insolvent, be heard to complain about matters that he can be said to have waived.

The motion is dismissed with costs.

Also found at [1992] 3 CLJ 1751